IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 489 of 2001

to

FIRST APPEALNo 496 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NARENDRAKUMAR VALLABHDAS

Appearance:

Mr.Umesh Trivedi,learned AGP for appellants
MR ASHISH M DAGLI for Respondent- claimant
in First Appeal No.489/2001.
Mr.P.V.Hathi for respondents - claimants in
First Appeals Nos.490 to 496 of 2001.

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE J.R.VORA

Date of decision: 08/03/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This group of eight First Appeals under Sec.54 of the Land Acquisition Act 1894 read with Sec.96 of Civil Procedure Code, 1908 is directed against the common judgment and order passed by the Court of Extra Assistant Judge, Rajkot District at Gondal in a group of Land Reference Cases Nos.149, 150 and 203 of 1987 and Land Reference Cases Nos.567 to 571 of 1988; Land Reference Case No.570/88 being the main case decided on 6.7.2000. It is not in dispute that the lands of the land owners of village Supedi were sought to be acquired for the purpose of approach road for Bridge over river Bhadar on the National Highway - Rajkot - Porbandar and for that purpose the Notification under Sec.4 was issued on 22.8.85.After the issue of the Notification under Sec.6 on 9.1.86, the Land Acquisition Officer passed the award on 4.8.86. The Land Acquisition Officer determined the rate of compensation as Rs.300/-- per Are i.e. Rs.3/-per sq.mt. for Bagayat land i.e. irrigated land and Rs.190/-- per Are i.e. Rs.1.90 Ps. per sq.mt. for Jirayat land i.e. non irrigated land. The claimants took the matter for Reference under Sec.18 and the Reference Court has awarded the compensation at the rate of Rs.40/-- Minus 1/3rd i.e. Rs.26.60 Ps. per sq.mt. with regard to both the types of land i.e. Bagayat land and Jirayat land. The Reference Court has placed reliance on a previous award i.e. Exh.61, which was passed in the matter of the lands at the outskirts of village Dhoraji, which according to the learned AGP is well developed area and this Award Exh.61 was based on the sale instances. While it is not disputed before this court by the appellants that the lands, which have been acquired from the village Supedi, are in close proximity with the lands, which were the subject matter of acquisition from the outskirts of township of Taluka Dhoraji and there is a distance of only 300 meters between the two sets of lands acquired, the argument of Mr. Trivedi, learned AGP is that the lands at the outskirts of Dhoraji, which was the subject mater of acquisition in Exh.61, were well developed lands and that the award was passed on the basis of sale instances and, therefore, the impugned award with regard to the lands of village Supedi could not be passed on the basis of Exh.61. Mr.P.V.Hathi has pointed out that it was admitted before the court by the witness i.e. Deputy

Executive Engineer Govindbhai Mulubhai that both the lands are situated at a short distance and in between two lands, there is only the Bridge which has been constructed on river Bhadar. Village Supedi and Dhoraji both are having common Simada and both are adjoining to each other. It has been recorded in the order of the Reference Court that it was not even disputed that the quality of both the lands is equal. It was also not disputed that both the lands i.e. acquired lands of Dhoraji Simtal and acquired lands of Supedi Simtal have been acquired for the same project i.e. for Dhoraji Bye-pass on National Highway leading from Rajkot to Porbandar. It was also not disputed that the Notification under Sec.4 in the case of Dhoraji was published on 31.10.85 and in the present case it was published on 22.8.85 and thus the date of the issue of the Notifications under Sec.4 in both the cases is in close proximity. We have also noticed that the previous award Exh.61 was challenged before the High Court and the High Court vide its judgment Exh.115 confirmed the award Exh.61 in First Appeal No.2715/96 and awarded the compensation of Rs.40/-- per sq.mt. for both the types of land i.e. Bagayat land as well as Jirayat land and ordered that 1/3rd amount would be deducted as per the order passed by the Reference Court on account of inequality in the size of the lands comprised in the sale instances and the size of the acquired land and the rate was accordingly determined at Rs.26.60 Ps. per sq.mt. Therefore, we find that so far as the rate, as has been determined by the Reference Court, is concerned, no interference whatsoever is warranted by this Court.

2. Learned AGP has submitted that the Reference Court has also awarded interest on the solatium as well as on the amount of additional compensation and the same is not permissible. Mr. Trivedi has placed reliance on a decision of the Supreme Court in the case of State of Maharashtra v. Maharau Srawan Hatkar, reported in JT 1995 (2) SC 582. In this case, the Supreme court held that additional amount under Sec.23(1A) is not a part of compensation awarded under Sec.23(1) and where the Court has not enhanced the compensation on reference, it has no power to award interest under Sec.28. We have heard both the sides on this aspect of the matter also. Mr. P.V.Hathi has submitted that entitlement of the interest on the amount of solatium as well as additional compensation under Sec.23(1A) is a question, which has been referred to a larger Bench by the Supreme court in the case of Kapur Chand Jain v. State Government of H.P., reported in AIR 1999 SC 3470 in view of the earlier conflicting decisions of the Supreme Court. However, as

the law stands today, neither solatium nor additional amount of compensation under Sec.23(1A) can be treated as a component of the compensation and, therefore, the interest cannot be awarded on the amount of solatium and additional compensation. As the law stands today, the interest cannot be awarded on the solatium and on the additional compensation under Sec.23(1A) of the Land Acquisition Act and, therefore, the impugned award in the instant case deserves to be modified and, therefore, while upholding the rate at which the compensation has been granted as also the solatium and the additional compensation under Sec.23(1A), we hereby set aside the direction with regard to the interest on solatium and additional compensation under Sec.23(1A) and the impugned award stands modified accordingly.

3. Mr.P.V.Hathi has submitted that since the matter is pending before the larger Bench of the Supreme Court, the claimants should not be deprived of their due benefits in case, in the reference the questions are answered in favour of the land owners by the Supreme Court. In the facts and circumstances of this case, we observe that in case the questions are answered in favour of the claimants by the Supreme court in the reference by the larger Bench, as has been made in the case of Kapur Chand Jain v. State Government of H.P. (Supra), it will be open for the land owners - claimants to seek appropriate legal remedy, which may be available to them.

4. All these eight Appeals are partly allowed as above and the impugned award stands modified as above. No order as to costs.

It is expected that the due amount of compensation shall be deposited by the authority within a period of 3 months from the date the certified copy of this order is served upon the concerned authority by either of the parties.

(M.R.Calla,J)

(J.R.Vora,J)